

Attorney Docket No. 5576-158  
Application Serial No.: 10/801,229  
Filed: March 16, 2004

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#### **REMARKS**

Claims 1-4 and 9 are currently pending in this application. The claims stand rejected as being anticipated and indefinite. Applicants respectfully request entry of the amendment presented above and reconsideration of this application in view of the amendment above and the comments below.

#### **Support for Claim Amendments**

The amendments presented above have been made to recite particular features of the inventions so as to expedite the prosecution of the present application to allowance in accordance with the USPTO Patent Business Goals (65 Fed. Reg. 54603, September 8, 2000). These amendments do not represent an acquiescence or agreement with any of the outstanding rejections.

Claims 1, 3, 4 and 9 are amended herein to address issues raised by the Examiner in regard to antecedent basis, and to more particularly point out what Applicants regard as the invention. Applicants believe that the present amendments introduce no new matter beyond that which is disclosed in the application as originally filed. Support for these amendments can be found in the specification and particularly in the Examples described therein. The rejections of the pending claims are discussed hereinbelow in the order that they are presented in the Action.

#### **Claim Rejections - 35 U.S.C. § 112, Second Paragraph**

Claims 1-4 and 9 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim what Applicants regard as the invention.

Claims 1 and 9 are amended herein to provide proper antecedent basis for the recitations therein, and claims 3 and 4 are amended herein as suggested by the Examiner.

In view of the foregoing, Applicants believe that the instant claims as amended satisfy the requirements of 35 U.S.C § 112, second paragraph and respectfully request that the rejections on this basis be withdrawn.

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**Claim Rejections - 35 U.S.C. § 102**

Claim 1-4 and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by European Patent Application Publication No. EP0540932 A1 (hereinafter, the EP '932 Application). It is the contention of the Examiner that the EP '932 Application discloses each and every limitation of the invention as instantly claimed. Applicants respectfully traverse this rejection.

Case law holds and the Manual for Patent Examination Procedure ("M.P.E.P.") states that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Furthermore, the identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Additionally, anticipation under 35 U.S.C. § 102 requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention. *Apple Computer Inc. v. Articulate Systems Inc.* 57 USPQ2d 1057, 1061 (Fed. Cir. 2000). Furthermore, a finding of anticipation further requires that there must be no difference between the claimed invention and the disclosure of the cited reference as viewed by one of ordinary skill in the art. *See Scripps Clinic & Research Foundation v. Genentech Inc.*, 927 F.2d 1565, 1576, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991). Additionally, the cited prior art reference must be enabling, thereby placing the allegedly disclosed matter in the possession of the public. *In re Brown*, 329 F.2d 1006, 1011, 141 U.S.P.Q. 245, 249 (C.C.P.A. 1964). Thus, the prior art reference must adequately describe the claimed invention so that a person of ordinary skill in the art could make and use the invention.

The EP '932 Application discloses a dispenser comprising two or more polymeric chambers, each comprising a pheromone-permeable upper film, which is responsible for release of the active ingredient (page 11, lines 20 and 21 of the translation of the EP '932 Application), and a pheromone-impermeable lower film. Each chamber can comprise a different upper film, and the rates of release of the individual pheromones contained in each chamber can thus be matched with one another (page 13, lines 9-12 of the translation of the EP '932 Application). The chambers in the dispenser of the EP '932 Application require at least two different film

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materials having different permeability. Thus, the dispenser of the EP '932 Application comprises chambers comprising different materials in construction.

As amended herein, the presently claimed invention is directed to a dispenser in which the problem of using two or more sex pheromone and the controlled release thereof is solved by the specific arrangement of the substances in the first and second polymer chambers, and does not require that the polymer chambers comprise different polymer materials. In view of the foregoing, Applicants present that the instant claims are not anticipated by the EP '932 Application, in that the EP '932 Application does not teach all the elements of the claimed invention, to which Applicants respectfully request that the instant rejection be withdrawn.

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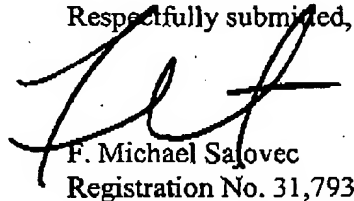
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### CONCLUSIONS

Applicants believe that the points and concerns raised by the Examiner in the Action have been addressed in full, it is respectfully submitted that this application is in condition for allowance. Should the Examiner have any remaining concerns, it is respectfully requested that the Examiner contact the undersigned Attorney at (919) 854-1400 to expedite the prosecution of this application to allowance.

No fee is believed due with this paper. Applicants believe this amount to be correct. However, should any extension of time be required, Applicants request that this be considered a petition therefor, and the Commissioner is hereby authorized to charge any deficiency or credit any refund to Deposit Account No. 50-0220.

Respectfully submitted,



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I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office via the central facsimile number 571-273-8300 on November 29, 2006 and is addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



Tracy Wallace